

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

THOMAS ALVARADO,

Plaintiff,

vs.

WARDEN CROSSROAD
CORRECTIONAL CENTER, et al.,

Defendants.

CV-15-05-GF-BMM-JTJ

**ORDER ADOPTING UNITED STATES
MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATIONS**

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on October 26, 2015. (Doc. 10.) Neither party filed objections. When a party makes no objections, the Court need not review de novo the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149–152 (1986). The Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston construed Alvarado's claims in his Amended Complaint as Eighth Amendment denial of medical care claims. Alvarado alleges permanent disfigurement due to an improperly cared for broken finger and knee injury. Alvarado is a federal prisoner currently incarcerated at the Federal Correctional

Institution in Herlong, California. The incidents complained of in his Amended Complaint occurred at Crossroads Correctional Center (“CCC”) in Shelby, Montana. Mr. Alvarado is proceeding in forma pauperis and without counsel.

In his Amended Complaint, Mr. Alvarado names the following Defendants: Warden Sharpe, Case Manager Yaskew, Lieutenant Finn, Dr. Weaver, Donna Randolph, U.S. Marshal David Bell, and Correctional Corporation of America. Judge Johnston recommends that the Defendants named in the original complaint, but not in the amended complaint (Defendant M.L. Rink and all Jane and John Does), should be dismissed. Judge Johnston further recommends that Alvarado’s claims that he was denied an x-ray while incarcerated at CCC, and his claims against David Bell, should be dismissed.

The Court agrees with Judge Johnston that while the alleged denial of x-rays does not amount to deliberate indifference, the alleged denial of all treatment for Alvarado’s pain for nearly a week for a broken finger and injured knee plausibly states a claim for deliberate indifference to serious medical needs. The Court agrees with Judge Johnstone’s determination that Defendants Sharpe, Yaskew, Finn/Linn, Weaver, Randolph, and Correctional Corporation of America must respond to these claims. There remains no clear error in any of the Magistrate’s Findings and Recommendations, therefore,

IT IS HEREBY ORDERED that Judge Johnston's Findings and Recommendations (Doc. 10) is ADOPTED IN FULL. **IT IS FURTHER ORDERED** that Alvarado's claims that he was denied an x-ray while incarcerated at Crossroads Correctional Center, and Defendants M.L. Rink, David Bell, and all Jane and John Does should be **DISMISSED**.

DATED this 16th day of December, 2015.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with "Brian" on top and "Morris" on the bottom, both starting with a capital letter.

Brian Morris
United States District Court Judge